

HON. JUDGE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

GROUP14 TECHNOLOGIES, INC,

Plaintiff,

v.

NEXEON LIMITED,

Defendant.

CASE NO. 2:22-cv-01354-TSZ

**STIPULATION AND
ORDER RE:
PRODUCTION OF
DOCUMENTS AND
ESI**

1. Purpose

This Stipulation and Order (“Order”) governs discovery of electronically stored information (“ESI”) in this case; however, nothing in this Order shall be interpreted to require production of irrelevant information or disclosures beyond those required by the Federal Rules of Civil Procedure (“FRCP”). To the extent a party reasonably believes that compliance with this Order imposes an undue burden with respect to any protocol, document or source of documents, the parties shall promptly meet and confer in an effort to resolve the issue.

Further, the parties agree to make a good faith effort to identify discoverable sources of ESI and to ensure that this Order provides for production of all such information in a

1 reasonably usable form accompanied by metadata sufficient to accurately search and sort
2 each party's production. The parties agree to meet and confer if they identify discoverable
3 ESI sources that are not covered by the technical specifications in this Order.

4 **2. Definitions**

5 The following definitions apply to this Order:

6
7 A. **"Database"** means an electronic collection of structured data (often
8 maintained in a non-custodial manner).

9 B. **"Family"** means a group of static documents maintained as a single unit in
0 the ordinary course of business (*e.g.*, an email and its attachments, but not, for example, an
1 email containing hyperlinks).

2
3 C. **"ESI" or "Electronic Document"** means electronically stored information
4 as defined in FRCP 34.

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6 D. **"Extracted Text"** refers to the result of the process by which content of an
7 Electronic Document is electronically extracted during eDiscovery processing.

8 E. **"Native Format"** means the default format of ESI created by its associated
9 software program and also includes the export format of documents that are not maintained
20 in a usable Native Format.

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22 F. **"Optical Character Recognition" or "OCR"** refers to the result of the
23 process by which a hard copy or non-searchable Electronic Document is scanned by a
24 computer to capture text from the face of the document.
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1 G. **“Privileged Information”** refers to information subject to a claim of
2 attorney-client privilege, work-product protection, or other privilege or immunity.

3 H. **“Producing Party”** means any party or non-party in connection with this
4 case that produces documents or information under this Order.

5 I. **“Receiving Party”** means any party to this case who receives documents or
6 information under this Order.

7
8 **3. Production Format**

9 Subject to the exceptions for documents to be produced in Native Format,
10 documents will be produced as Bates-stamped tagged image file format (“Tiff”) images
11 accompanied by an image load file, a data load file with fielded metadata, document-level
12 extracted text for ESI, and OCR text for scanned hard copy documents and ESI that does
13 not contain extractable text. Detailed requirements, including files to be delivered in
14 Native Format, are below.
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16
17 A. **De-duplication.** The parties will use industry standard MD5 or SHA hash
18 values at the Family level to globally deduplicate all files identified for production. Stand-
19 alone Electronic Documents will not be compared to email attachments for deduplication
20 purposes. Hard copy documents containing handwritten notes will not be considered as
21 duplicative of any other document.

22
23 B. **Document Unitization.** Where documents with attachments are produced,
24 they will be attached in the same manner as included in the original file. Unless documents
25 contain solely Privileged Information, parties will produce complete Document Families
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1 where any portion of the Family contains relevant information. Where documents are
2 produced and the full Family is not included, the Producing Party will identify the missing
3 attachments by means of a “place holder” file explaining why the document was not
4 produced. Where the Producing Party converts hard copy documents into electronic
5 format, distinct documents must not be merged into a single record, and single documents
6 must not be split into multiple records. Hard copy documents that are segregated or
7 separated from other documents, whether by inclusion of binders, files, dividers, tabs, clips
8 or any other method, will be produced in a manner that reflects these divisions.
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11 C. **Production Delivery.** Productions shall be delivered via secure online data
12 transfer or on an external hard drive if the size of a production makes online transfer
13 impractical.

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15 D. **Encryption.** To maximize the security of information in transit, the parties
16 shall encrypt any media on which documents are produced. In such cases, the Producing
17 Party will separately transmit the encryption key or password and applicable instructions
18 to the Receiving Party.

19 E. **Tiff Image Requirements.**

20
21 i. Tiff images will be produced in black and white, 300x300 dpi Group
22 IV single-page format and will be consecutively Bates-stamped.

23 ii. Images will include the following content where present:

24 a. For word processing files (*e.g.*, Microsoft Word): Comments,
25 “tracked changes,” similar in-line editing and all hidden content.
26

1 b. For presentation files (*e.g.*, Microsoft PowerPoint): Speaker
2 notes, comments, and all other hidden content.

3 c. For spreadsheet files (*e.g.*, Microsoft Excel – if applicable):
4 Hidden columns, rows, and sheets; comments, and any similar in-line editing or hidden
5 content.
6

7 **F. Native Production Requirements.**

8 i. Spreadsheet files (*e.g.*, Microsoft Excel and .csv files) and
9 presentation files (*e.g.*, Microsoft PowerPoint) shall be provided in Native Format with a
10 single placeholder image bearing the Bates number and confidentiality designation.
11

12 ii. The parties may use a Native File redaction tool (*e.g.* “Blackout”) to
13 redact Privileged Information from documents produced in Native Format.

14 iii. When redaction of a spreadsheet is necessary in image format, a
15 redacted full Tiff version may be produced if the spreadsheet is manually formatted for
16 optimal printing. If the spreadsheet requiring redaction is not reasonably usable in Tiff
17 format, the parties will meet-and-confer to determine a suitable production format.
18

19 iv. Media files (*e.g.* .mp3, .wmv, etc.) will be produced in Native Format
20 with a single placeholder image bearing the Bates number and confidentiality designation.
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22 v. The parties will meet-and-confer to discuss a suitable production
23 format for any proprietary or non-standard file types that require special software or
24 technical knowledge for review, Databases and Database reports, and any document types
25 that cannot be accurately rendered or reviewed in image format.
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1 vi. The parties may request color copies of any documents that cannot be
2 accurately reviewed in black and white Tiff format. Requests by a Receiving Party for color
3 documents should not be unreasonably refused.

4 **G. Load Files.** A Concordance compatible data load file will be provided with
5 each production volume containing a header row listing all metadata fields included in the
6 volume. Image load files will be produced in Concordance/Opticon compatible format.

7 **H. Extracted Text/OCR**

8 i. Extracted Text must be provided if available for documents collected
9 from electronic sources. Text generated via OCR shall be provided for all documents that
10 do not contain electronically extractable text (*e.g.*, non-searchable PDF files or JPG
11 images), for documents redacted in image format, and hard copy documents. The parties
12 will not degrade the searchability of documents as part of the document production process.

13 ii. Document text will be produced as separate, document-level text files
14 and will not be embedded in the metadata load file.

15 iii. Text files will be named according to the beginning Bates number of
16 the document to which they correspond.

17 iv. If a document is provided in Native Format, the text file will contain
18 the Extracted Text of the native file.

19 **I. Metadata.** The parties agree to produce the metadata fields listed in
20 Appendix A to this Order where applicable. Aside from metadata fields generated during
21 eDiscovery processing and production (*e.g.*, Bates numbers, hash and custodian values,
22

1 etc.), the Producing Party is not obligated to produce metadata from a document if metadata
2 is not reasonably available.

3 **4. Documents Protected from Discovery**

4 • **Review and Redaction.** Documents containing both Privileged Information
5 and responsive non-Privileged Information will be produced with the Privileged
6 Information redacted in such a way as to show the location of the redaction within the
7 document. Nothing in this Order shall relieve a party from its obligation to log information
8 redacted under a claim of privilege in compliance with FRCP 26(b)(5)(A) or to otherwise
9 provide information required under the rule so that the claim of privilege may be evaluated.
10

11 • **Non-Waiver.** Pursuant to Rule 502(d) of the Federal Rules of Evidence
12 (“FRE”), nothing in this Order shall require disclosure of Privileged Information, and the
13 production of Privileged Information is not a waiver of the privilege or protection from
14 discovery in this case or in any other federal or state proceeding. This Order shall be
15 interpreted to provide the maximum protection allowed by FRE 502(d). The provisions of
16 FRE 502(b) do not apply.
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18 i. This Order will not serve to limit a party’s right to conduct a review
19 of Documents, ESI or information (including metadata) for relevance, responsiveness
20 and/or segregation of Privileged Information before production.
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22 ii. FRCP 26(b)(5)(B) governs the proper procedure for the notification
23 and return of Privileged Information when identified by the Producing Party.
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• **Logging Procedures**

i. Documents withheld or redacted based upon a claim of privilege (or subject to a recognized immunity from discovery) shall be included on a privilege log that complies with FRCP 26(b)(5)(A).

ii. However, the parties will not be required to log privileged communications with outside counsel of record or attorney work product dated after September 23, 2022. All other documents withheld under a claim of privilege should be logged.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: January 31, 2023

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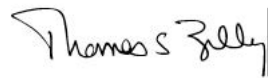
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4 *Group 14 Technologies, Inc.*

7 PURSUANT TO STIPULATION, IT IS SO ORDERED

8 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
9 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
0 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
1 documents, including the attorney-client privilege, attorney work-product protection, or any other
2 privilege or protection recognized by law.

3
4 DATED: February 1, 2023



6
7 Hon. Thomas S. Zilly
United States District Court Judge

APPENDIX A

METADATA FIELDS

1. **BegBates** -- Beginning Bates number.
2. **EndBates** -- Ending Bates number.
3. **BegAttach** -- Bates number of the first page of a Family range.
4. **EndAttach** -- Bates number of the last page of a Family range.
5. **ParentID** -- Parent Bates number, populated only for child records.
6. **PageCount** -- Number of pages in a document.
7. **FileExtension** -- Original file extension as the document was maintained
in the ordinary course.
8. **FileSize** -- File size in bytes.
9. **DocTitle** -- document title as stored in file metadata or a cloud repository.
10. **DocSubject** -- Any value populated in the Subject field of the document
properties.
11. **Custodian** -- Primary custodian full name.
12. **AllCustodians** -- All custodians from whom a copy of a document was
collected.
13. **Author** -- document author information for non-email.
14. **Company** -- File company information.
15. **Email From**
16. **Email To**

1 **17. Email CC**

2 **18. Email BCC**

3 **19. Email Subject**

4 **20. IntMsgID**

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6 **21. Attachments** -- Name of attached file(s) as maintained in the ordinary
7 course of business.

8 **22. DateCreated** -- File date and time created as extracted from the Native
9 File.

10 **23. DateModified** -- File date and time modified as extracted from the Native
11 File.

12 **24. DateLastAccessed** -- File date and time accessed as extracted from the
13 Native file.

14 **25. DateLastPrinted** -- File date and time last printed as extracted from the
15 Native file.

16 **26. DateLastSaved** -- File date and time last saved as extracted from the
17 Native File.

18 **27. DateSent** -- Email date and time sent.

19 **28. DateReceived** -- Email date and time received.

20 **29. FileName** -- Name of the file as maintained in the ordinary course of
21 business with extension.
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1 30. **FilePath** -- The full path to the original location of the file as maintained
2 in the ordinary course of business.

3 31. **DupFilePaths** -- FilePath information for files removed via deduplication.

4 32. **Hash** -- The hash value generated at processing.

5 33. **TextPath** -- The path to the text file for each record in the production
6 volume, including filename.

7 34. **NativePath** -- The path to the Native Format file on the delivery media,
8 including the file name (if a NativeFormat file is provided).
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